DRAFT ENFORCEMENT/COMPLIANCE DATA STANDARD
Responses to Consolidated Comments from October 4, 2001 Federal Register Notice (66 FR 50644)

[Draft Responsiveness Summary; 1/25/02]

Hazardous Waste Enforcement and Compliance Assurance Task Force (Task Force) of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO)

1. The Compliance Monitoring Multi-Media Indicator (page 5, #8) only provides information about whether the information is single or multi-media. There do not appear to be any fields, which distinguish which program the information is related to, i.e., air, hazardous waste, wastewater, etc. It would be a significant oversight not to allow space for the Multi-Media partners to be identified. Instead of using "single," we suggest you provide a list of acceptable program types, with multi-media being one of the types.

A: This is a good suggestion, and we have adopted it. Data Element 8 now includes a list of environmental programs that may be covered by a particular Compliance Monitoring Action. By selecting all that apply, the reporting agency can identify those Compliance Monitoring Actions that are multi-media, and which media or programs apply.

2. Under "Affiliation of Defendant/Respondent to Facility" (page 21, #54), the permissible value of "other" should have a comment field associated with it for a description of what "other" means. Without a description, that data field will be too vague and could potentially skew the data.

A: We agree that, in general, a value such as "Other" is best avoided. However, in this Data Element we feel it is unavoidable. While the vast majority of environmental enforcement actions are taken against owners, operators, generators or transporters, occasionally it may occur that a respondent/defendant fits none of these categories, yet is not easily classified into a fifth distinct category. For example, it may happen that an enforcement agency must take legal action against a person whose property is adjacent to a hazardous waste site if the adjacent property owner is impeding the progress of the cleanup; or we may take action against an importer or exporter of regulated materials, who is nevertheless not the owner or operator of a regulated "facility " and also not a transporter or generator.

3. The following fields should be at the violation level, not the enforcement action general information level: Federal Statute Violated, State Statute Violated, Tribal Statute Violated, Local Statute Violated, Citation, and Noncompliance or Corrective Action Description. These should be at the violation level because each violation included in an enforcement action could have different citations associated to them and the field lengths are not large enough to include all of them. It is not advisable to just lengthen the field lengths and

integrate the information because it would then be difficult to query for specific citations, which is a desirable activity.

A: Either approach would make sense. We elected to include the enumerated Data Elements under the heading "Enforcement Action General Information." We made this choice because it is at the time that an enforcement action is initiated that the regulatory agency has made a relatively formal determination of exactly which statutory and/or regulatory provisions have in fact been violated, with sufficient evidence therefor to support the action. At the earlier stage, when a compliance monitoring action has been completed, the final determinations about specific statutory or regulatory violations may not yet have been made. Within EPA and U.S. DOJ, at least, discussions regarding the precise list of infractions to be cited in an enforcement action may continue virtually to the time a case is actually initiated. Those discussions, which may identify other potential but less well documented violations, are generally considered confidential. It might be premature to include a list of presumed violations before those discussions have been completed.

4. The field "Noncompliance or Corrective Action Description" should be broken down into two distinct fields. It is not advisable to have one data standard with two different definitions.

A: Ordinarily we agree that different kinds of items should be in different data elements. Here, however, the two items are really of the same sort, at least with respect to the purpose of the data element. This data element elicits a brief, narrative statement of what the enforcement action is really about. All environmental enforcement actions will, by definition, involve either an allegation that a violation has occurred, or a claim that some kind or corrective or remedial action must be taken (e.g., a hazardous waste site cleanup), or both. It therefore makes sense, we believe, to elicit the full narrative description in a single data element.

5. The compliance milestones status and status determination dates seem to be more of a report than an actual database field requirement. It would make more sense to have fields related to the due dates and the actual compliance dates and then prepare a report which would analyze the data. Many States do not have computerized systems to track perceived milestones and may not have the resources to set up such a system. If a decision is made to maintain these fields, we would urge EPA to make these fields optional rather than mandatory.

A: It is precisely because many states do not have such detailed tracking systems – and, for that matter, EPA does not use such systems for many of its enforcement actions – that we used this format. The commenter is correct that it requires analysis or summarization of the current state of compliance by the defendant or respondent with applicable milestones. As a practical matter, systems that do allow detailed tracking at the milestone level typically also have the capability to automatically yield an overall compliance status (e.g., "in compliance with all applicable milestones" or

"not in compliance with all applicable milestones"). In any event, reporting under this or any other Data Element is determined by program managers and is not dictated by the mere existence of the Data Element.

6. The level of detail included in the Enforcement/Compliance data standards (i.e., categorizing and sub-categorizing inspection types and tracking milestones in enforcement actions) seems to go beyond the idea of a "core" set of data standards that should be common in all States and regions.

A: This is certainly true. We anticipate that only those "core" data will be required. For the remainder, the purpose is to provide a template for sharing additional data when and to the extent that the reporting agencies elect to do so.

Massachusetts Department of Environmental Protection

7. Compliance Monitoring Action Type.

7a. The permissible values do not cover 3rd party certifications. While that may not be relevant now in EPA programs, it may be a factor in the future as certification and statistical auditing as a means to monitor compliance gains credibility.

A: It is not certain that 3rd party certifications would, in fact, represent "compliance monitoring actions" by the reporting regulatory agency. In any event, if and when such certifications become common and/or are recognized as such compliance monitoring actions, it will be relatively easy to add an appropriate permissible value.

7b. There are no notes that help distinguish between a compliance inspection and a compliance investigation. Guidance would be helpful in what may be a distinction in degree that staff may find hard to make.

A: We believe the difference is adequately set out in the definitions of the two Permissible Values in Data Element #5. An inspection is defined as a "visit to a facility or site for the purpose of gathering information to determine compliance including direct observations of facility operations." An investigation is defined as an "extraordinary, detailed assessment of a regulated entity's compliance status." The salient difference is the complexity and duration of the inquiry. An inspection typically lasts for a day or less, or perhaps even several days. An investigation may take weeks on site, and weeks more of reviewing documents. We have added a phrase to the definition of "investigation" to highlight this temporal aspect.

8. Compliance Inspection Types

8a. MADEP does track inspections, but not on the basis of whether sampling was required. We do, however, distinguish between announced and unannounced inspections.

A: We do not anticipate that Data Element # 6 (Compliance Inspection Type) would be mandatory. For those states that do not distinguish among these various types of compliance inspection, the only information to be provided would be under Data Element #5 (Compliance Monitoring Type).

8b. I think the concept of a case development inspection is a good one, but if only one type of inspection can be entered for an action additional notes or more definitional clarity is required to distinguish a case development inspection from a compliance inspection. For example, are the compliance inspections the initial inspection and the case development inspection the follow up/through inspections?

A: A Case Development Inspection is performed explicitly to gather further evidence and provide further support to a planned or ongoing enforcement action, i.e., after a decision has already been made that an actionable violation exists at a facility. We believe the current definition makes this distinction.

8c. Reconnaissance or Screening Inspections should include inspections due to permit review.

A: If a "permit review" inspection has, as one of its objectives, the determination of a permittee's status of compliance with statutes, rules, or permit conditions, it would certainly qualify as a compliance inspection (see Notes for Data Element #5). Then the question is which type of compliance inspection should be selected. The answer will depend on the nature of the "permit review" inspection – its objectives, its duration/complexity and whether or not sampling is performed.

9. Compliance Monitoring Action Reason - There is an increasing, and positive, trend to integrated "core" program inspections with agency priority actions. For example, there may be requirement by EPA to inspect a certain number of major dischargers each year, (i.e. what I believe would be considered a core program element), but we may select among the entities based on a watershed basin schedule. Thus, if the core program definition is really keyed into all the sources being monitored, or the selection being random, the notes should reflect the importance of those factors.

A: The commenter is correct that more than one of the Permissible Values in this Data Element #10 may apply to a given Compliance Monitoring Action. In that case, the reporting agency can choose how to characterize the Reason; in the example given by the commenter, we would encourage selection of "Agency Priority" as providing a more specific rationale. We have added a Note to that effect in Data Element #10.

10. Violation (subject area group) - The description of a violation does not cover Massachusetts's waste clean up program (M.G.L. c. 21E) and the regulations adopted thereunder (Massachusetts Contingency Plan). The framework of the program is third party certifications of site assessment and clean up driven by established procedures and timelines set forth in the regulations. There is no requirement for DEP to execute a Final Order for a PRP to be in violation of the MCP and subject to substantial administrative penalties.

A: If the specific obligation to perform a corrective action is explicitly set out in a statute or rule, and the party fails to perform its duties under such a law, that would of course represent a violation. We have added a clarifying phrase to that effect in the second paragraph in the definition of this subject area group.

11. Violation Class Type - This category needs to be more specific.

A: These are terms of art defined by EPA; we have clarified that in Data Element #15.

12. Enforcement Action Identifier - A specific list needs to be developed for specified enforcement actions to be taken.

A: This Data Element (#20) simply solicits information from a regulatory agency's own system. The unique identifier used in that agency's own database is to be reported through this Data Element.

13. Enforcement Action Type - It is a fairly common procedure for us to issue a Notice of Enforcement Conference to a violator where the violation is significant and the agency does not want to issue a the equivalent of a Written Notice of Violation which states what actions the violator must take to return to compliance. The NOEC may lead directly to a Final Order as a result of negotiations initiated by the NOEC. If the Notice of Violation definition stated that it "may" contain a request for compliance actions, both our Notice of Non Compliance and NOEC would be covered.

A: We do not believe it is appropriate to change the definition of "Written Notice of Violation" in Data Element #31 as suggested by this commenter. If so, there would be virtually no distinction between such a Notice and the previously defined "Letter to Regulated Entity." In any event, based on the description provided by this commenter, the "NOEC" it uses would likely qualify as a "Written Notice of Violation," as that term is used in Data Element #31. This assumes that, in most instances, a follow-up action (such as Final Order) is contemplated when a NOEC is issued. In any event, the reporting agency is free to select whichever term it believes is most closely applicable to any unique enforcement instruments it may use, such as this agency's NOEC.

14. Enforcement Action Resolution Type - The distinction between a Unilaterally Issued and a Default is not clear. Is it intended that a Unilateral Order must never be proceeded by a Proposed Order? Under our terminology, if we issued an order without the violator's consent it would be considered a Unilateral Order under which he would have to enter an administrative appeal to prevent collection of penalties for subsequent non-compliance. If we issued a Proposed Consent Order to initiate negotiations, the violator's failure to respond would not result in an legal consequences until DEP decided that agreement could not be reached and a Unilateral Order or referral to the Attorney General's Office was justified. In the parlance of the standards, perhaps it's a Superceded action.

A: A Default Order is one that is issued by the Responsible Authority (e.g., Commissioner, Director, or adjudicatory tribunal) in the face of the failure of a respondent or defendant to timely respond to a previously issued complaint or proposed order; or to timely proceed with litigation. A unilateral order is one issued by the Responsible Authority without there being the procedural requirement of first issuing a Complaint or Proposed Order, and without the respondent have the right to a formal administrative hearing before the order takes effect (i.e., before the

respondent's failure to comply with its terms could lead to additional legal consequences, such as penalty liability). To answer the commenter's questions directly: It is correct that a "Unilateral Order" will never be preceded by a "Proposed Order," as those terms are used here. And as we understand the example given by this commenter, the instrument appears to fit the definition of "Unilateral Order."

15. Cash Penalty Sought/Required - A negotiation method DEP uses on occasion is to issue a penalty but suspend payment of a portion of the penalty subject to no further non-compliance or some affirmative action that does not constitute an SEP. It is not clear whether the amount sought would include the assessed penalty portion and the amount required only the portion payable when the Final Order issued.

A: When a Final Order specifies that a portion of the penalty is suspended, providing compliance is timely achieved and maintained, but must be paid in the event of future non-compliance, then the suspended amount is in the nature of a stipulated penalty. Thus, the "Cash Civil Penalty Amount Required" called for in Data Element #37 should be the amount the respondent must pay now (i.e., reflecting the reduction by the amount that has been suspended). If the respondent is later obliged to pay the suspended amount, due to further non-compliance, that amount should be reported in Data Element #38, "Stipulated Penalty Amount Required." We have added a Note to that Data Element to clarify that suspended or contingent penalties, when their payment is required due to subsequent non-compliance, should be recorded here.

Michigan Department of Environmental Quality (MDEQ)

16. The set of data elements selected in each draft standard under consideration appears to be general and comprehensive and follow Michigan's compliance and enforcement process. However, most categories of the Standard are broken down into many detailed subcategories. The MDEQ has recently adopted a Compliance and Enforcement Policy, which requires program divisions to conduct compliance tracking for the specified compliance measures. The compliance measures in the MDEQ Policy generally follow the draft Standard, but we do not track all of the detailed subcategories.

A: We recognize that the proposed Data Standard is quite comprehensive, particular in certain areas, and that not all reporting agencies will maintain data in all these areas with the same level of detail or subcategorization. The detail is provided, however, for those who choose to make use of it.

17. In addition at least some portion of the data elements would apply in every regulatory program, but it will not be the same portion that applies across programs, or even within the same program but across states. It may therefore be difficult to achieve complete data sets without broadening the current reporting requirements for some programs.

A: The goal of the Data Standards is not necessarily to ensure that all agencies report all possible data identified in every data element. Rather, it is to ensure that when data is shared, there is a common "language" so that apples are compared to and grouped with apples and not oranges.

New Hampshire Department of Environmental Services
("EDE" means Enforcement Data Element, and the number refers to the data element number)

18. I was unable to discern a difference between EDE#11 (Compliance Monitoring Action Priority Originator) and EDE#12 (Compliance Monitoring Priority) – is there one?

A: The fields are not likely to be duplicative. In most instances the name of a Priority will not provide the user with sufficient information to determine who the Originator of that Priority might have been. For example, an EPA national priority might be "Coal-Fired Power Plants." The name alone does not, however, identify that EPA Headquarters is the originator of that priority.

19. In EDE#16 (Compliance Schedule Indicator Code – "whether the regulated entity is currently on a legally enforceable compliance schedule"), it is not clear whether a "Y" would mean that the violation was of an enforceable compliance schedule (*i.e.*, the entity had been on a compliance schedule and had not met its obligations) or whether the regulated entity was put on an enforceable compliance schedule as a result of the violation.

A: It is the latter. That is, this specific Data Element merely solicits a Yes/No answer to the question of whether or not a given regulated entity is currently subject to an enforceable compliance schedule.

20. It is not clear what EDE#29 (Citation/"[t]he citation(s) of the violations alleged.") calls for – an example would be quite helpful.

A: Data Element #29 calls for the citation to the regulation that is alleged to have been violated; or, if not applicable, to the citation of the statute alleged to have been violated. The Note specifies that commonly accepted form of citation should be used. For example, a violation of federal Clean Air Act asbestos demolition/renovation regulations would be cited as 40 CFR 61.145; a violation of the information gathering requirement in Section 3007 the federal RCRA law would be cited as 42 USC 6927. All federal, state and local statutes and regulations have a standardized citation format that is commonly accepted.

21. In EDE#31 (Enforcement Action Type), it is not clear whether a Final Order is appealable or whether an action would be a Complaint/Proposed Order until after all appeal rights had been exercised or had expired. The inclusion in EDE#33 (Enforcement Action Status) of the Permissible Value "Stayed While Under Appeal" suggests that a Final Order is appealable. If so, it should be clarified in EDE#31.

A: A Final Order may or may not be administratively, or even judicially, appealable. The answer will vary from program to program, and from jurisdiction to jurisdiction. Whether it is appealable is not determinative of whether it is considered "Final"; however, the reverse may be true: in most jurisdictions, an order is appealable only once it has become "Final." (In some jurisdictions, an administrative "appeal" of an order is, in reality, nothing more than the respondent requesting the opportunity for a hearing under the applicable procedural rules. If so, the initial instrument might alternatively be characterized as a "Proposed Order".)

22. Under the Relationships noted for Additional Enforcement Action Attributes (immediately preceding EDE#32), the term Enforcement Action Relief Sought is used – but the term does not appear to be used elsewhere in the document. (It would make sense to have a data element for Enforcement Action Relief Sought so we can distinguish penalty-only actions from injunctive relief-only and injunctive relief-and-penalty actions.)

A: Good point. We have placed into quotation marks, and used lower case letters for the phrase "relief sought;" and we have added a parenthetical reference to four separate Data Elements: Cash Civil Penalty Amount Sought (#36); Cost Recovery Amount Sought (#43); Collection Amount Sought (#45); and Injunctive Relief Sought (#47).

23. The term "Civil Penalty" as used in EDE#36, EDE#37, and EDE#42 and as defined under Terms and Definitions is confusing. The definition appears to be broad enough to include administrative and criminal penalties – but "civil penalty" is used limited in many states to only civil judicial actions, not administrative or criminal actions. It would be better to use the term "Cash Penalty" and to clarify in the definition of "Cash Penalty" that it includes administrative, civil, and criminal penalties. Also, the use of suspended or conditional or contingent penalties does not seem to be accounted for – but we frequently include such penalties and they should be accounted for.

A: We understand the concern, but have elected to retain the current nomenclature. We specifically do *not* intend to include penalties, fines or monetary restitution imposed through a criminal enforcement proceeding. On the other hand, we do intend that penalties imposed through either an administrative or a judicial civil action be included. (It is our understanding that, by definition, any administrative enforcement action is a species of civil action; criminal enforcement actions must be brought in a judicial forum.) We have clarified both points in the Terms and Definitions section.

24. The length of the field for EDE#39 (200 characters for narrative text describing SEPs) is too short; should be 2,000 as for other narrative fields. (Perhaps this was a typo?)

A: While we contemplate here that only a short summary of the SEP would be provided (for which 200 characters might be sufficient), we see no need to limit the field and so have increased it as suggested by the commenter.

25. The length of the field for EDE#50 (20 characters) appears to be too short, since one of the Permissible Values ("Implemented by Determination Date, but Later than Due Date") is 61 characters long.

A: We have increased the field to 100 characters. As a practical matter, however, it is not essential that the field length equal the number of characters of the longest Permissible Value; the values can be automatically converted to one- or two-character codes.

26. Also in EDE#50, two of the Permissible Values refer to "Compliance Milestones Implementation Status Determination Date", but EDE#51 (to which they seem to relate) is just "Compliance Milestones Status Determination Date".

A: We have deleted the word "Implementation" from the two Permissible Values in Data Element #50 where it erroneously appeared.

27. The Data Element Name for EDE#54 (Affiliation of Defendant/Respondent to Facility) is awkward and confusing. The information that seems to be asked for is the relationship of the Defendant/Respondent to the Facility, and it would be much clearer to just use that word.

A: We consider the words to be essentially interchangeable; we have not elected to make the suggested change.

28. There does not seem to be any EDE to capture the environmental or public health benefit of an enforcement action (such as emissions reduced, wetlands restored, *etc*.). With an increasing focus at both the state and federal level on outcomes rather than just outputs, this is an important element to include.

A: Within its own enforcement data system, EPA currently does gather data about the environmental benefits resulting from an enforcement action, but decided against including such data elements in the Enforcement & Compliance Data Standard at this time. The Workgroup will recommend to the Data Standards Council that this matter be considered again in the future.

Ohio Environmental Protection Agency

29. Regarding the Enforcement and Compliance standard, our Enterprise Data Model (EDM) and program-specific data models do not currently address all the data and relationships detailed in the proposed data standard. While we have no significant concern about the standard itself, we are concerned about our ability to meet it long term. For instance, if the standard is adopted and subsequently included as part of federal systems, Ohio would have difficulty meeting the standard in our routine electronic data reporting because we would not have enough data to support it. If the standard is adopted as is, we would like to see included some options or the ability to meet portions of the requirements as fulfillment of meeting the standard.

A: As previously stated, there is no intention to make reporting under all the Data Elements mandatory. Many of the Elements are not mandatory now, and we do not anticipate that they will become so.

30. Compliance Monitoring Priority - It appears that the Permissible values for the Compliance Monitoring Priority field are the same as those for the Compliance Monitoring *Action* Priority Originator data field. If that is the team's intent, it seems duplicative. The Compliance Monitoring Priority field should be used to identify the specific name of the Compliance Monitoring priority, i.e., Dry Cleaner Initiative, Permit Evaders Initiative, etc.

A: Correct; the names of specific priorities (EPA National, EPA Regional, State, Tribal and/or Local) would be added here as specific Permissible Values. We chose not to list them on the document circulated for comment, but they would certainly be included (and updated regularly) when the Data Standards are implemented. We have revised the text of the Note for Data Element #12 to clarify this.

31. Compliance Monitoring Action Outcome - The team lists as its last permissible value, no compliance monitoring (Access Denied). If an inspector was denied access, would it then be incumbent upon the responsible agency to pursue a legal action to obtain access and then conduct the inspection. Would this inspection then be considered a new distinct inspection or a continuation of the initial attempt? It would appear that under the proposed data standard, one would be required to create a new inspection record.

A: Yes, a new record would (or at least could) be created for the subsequent, successful inspection attempt. This would not be required; that is, the reporting agency could choose to use the same record, but change the Compliance Monitoring Outcome value.

32. Violation Class Type - Recommend using Significant Non-Complier (SNC) and Secondary Violation (SV) as the permissible values. This would correspond with the US EPA's terminology on this matter.

A: Not all EPA programs use the terminology "Secondary Violator," and not all States use it either. The terminology we have adopted in Data Element #15 combines the two most commonly used phrases – "significant violation" and "high priority violation" – into a single Permissible Value; and characterizes the rest of the universe of possible violations simply as "other."

33a. Enforcement Action Type - Recommend providing more detail for each of the permissible values so that the specific agency can determine which its enforcement actions fits into the listed values.

A: We are not certain what additional detail might be appropriate; we believe the list currently contains a sufficient level of detail.

33b Also, why is the team including as one of the permissible values, a letter from the Federal agency to a state/Tribe regarding violations by a regulated entity within the state/Tribe's jurisdiction? It would seem that the purpose of this data field is to capture the type of enforcement action taken by an agency against a regulated entity.

A: In certain programs (e.g., Safe Drinking Water Act, if the state has primacy), a federal notice to the state is the required first step in the enforcement process, even though the state is not the regulated entity.

34. Enforcement Action Cash Penalty and Supplemental Environmental Project (SEP) - The team was interested in capturing the proposed and final penalty payment, yet was only interested in capturing the amount of stipulated penalties that were required to be paid. Why is the team not interested in capturing the actual amount of stipulated penalties that the regulated entity actually paid?

A: In the first example, the proposed penalty is that amount proposed in the complaint or comparable document; the final penalty is the amount the defendant or respondent is required to pay pursuant to the terms of the applicable legal instrument (*i.e.*, a Final Order). It is *not* the amount actually paid. Similarly, for stipulated penalties, the Data Standard elicits information about the amount the defendant or respondent is required to pay, but also *not* the amount actually paid. The real difference is that for stipulated penalties there is no "proposed" amount, since the proposed amount is already set forth by stipulation in the Final Order itself.

35. Environmental Benefits of Enforcement Action - *[Note: these data elements were removed*] -These data fields should be included. In addition to capturing the environmental benefits of a SEP, we would also want to capture the environmental benefits of a clean-up that occurred as part of an enforcement action. Recommend that the team more clearly indicate that this grouping of data fields is for both SEPs, clean-up and compliance with regulations that result in specific, identifiable environmental benefits.

A: See response to Comment #28., above.

<u>Oregon Department of Environmental Quality (DEQ)</u>

36. Although the table header indicates a relationship to the facility standard, it does not address a relationship to the permit standard. An Enforcement/compliance action *may* relate to a specific permit. Such is not always the case, but when true, it is an item of interest. This is particularly relevant where the issue is a violation of a specific permit emission limit or other permit condition. We recommend that this relationship be noted, as is the relationship to a facility.

A: The Data Standard does provide for such relationships to be established. In the general information for the Violation group, it is explained that each violation can be associated with zero, one or more permits. Likewise, the Enforcement Action

general information states that an enforcement action can be associated with zero, one or more permits.

37. The standard identifies a date that the violation was determined, but does not identify the actual date of violation. While this is sometimes unknown, many violations are discovered as a result of DMR review. The date of the violation is self-reported, and is of interest. This is particularly true (along with the need for permit data) when the violation is due to a date-sensitive permit condition. We recommend that the date of violation be added as a field.

A: The Workgroup considered this, and concluded that in too many instances it will be either impossible or unwise to specify exactly "when" a violation occurred. We acknowledge that, for some violations which constitute documented singular events it is possible, even easy, to specify the date. Many violations, however, are ongoing or repetitive in nature. Some have taken place entirely in the past, but may have gone on for weeks, months or years before being corrected; other violations may be ongoing at the time a data report is made. It is often impossible to know how long a violation persisted, at least not without gathering additional information (e.g., through information request letters or through discovery during litigation). Specifying a single date in a database may even hamper a subsequent enforcement action in which the agency asserts that the violation is a continuing one.

Pat Garvey, EPA Office of Environmental Information (OEI)

38. Compliance Monitoring Agency Type (#4) has a field length of A(13). Is this long enough? In the Facility ID standard it is A(40) for close to the same thing.

A: We have changed the field length for this item to 40 characters, as suggested.

39. Compliance Inspection Type (#6) - Are there only 4 types of inspections? There is nothing multi-media oriented.

A: A multi-media inspection is merely a compliance inspection which is intended to ascertain the status of a facility's compliance with more than one environmental statute or program. In any event, the information about which program(s) are included in a compliance inspection is solicited in Data Element #8, as revised.

40. The differences between Compliance Monitoring Action Priority Originator (#11) and Compliance Monitoring Priority (#12) are minor, but one is A(13) and the other is A(30)? Shouldn't these be the same?

A: The Originator (#11) is merely the name of the federal, state, local or tribal agency which originated the priority. By and large, these can be identified with abbreviations and/or acronyms. On the other hand, the Priority itself will likely require more complete words, and the field must therefore be longer. Nevertheless, we have changed the length for Data Element #11 to 30 characters, as suggested.

41. Compliance Monitoring Priority (#12) misuses the third column for permissible values.

A: We have clarified the note to confirm that this is only a "place holder." The actual names of priorities are now being added as Permissible Values.

42. Compliance Monitoring Action Outcome (#13) - For No Compliance Monitoring (Facility Shut Down), does this include facilities that are still in existence but not operating? Shut down is a new term from our active, inactive terms.

A: Whether the facility is temporarily or permanently shut down, this Value may be selected to indicate that, although a compliance inspection was attempted, it could not be carried out.

43. #20 Enforcement Identifier is A(20) but in Facility ID we have system identifiers at A(30). This could be a problem.

A: We believe 20 characters is likely to be long enough to accommodate the unique identifiers used in most data systems to identify each separate enforcement action record. There is no connection between the length of the Enforcement Action identifier and the length of the Facility identifier, which we know requires more characters.

44. #23 (Enforcement Agency Type) and #4 (Compliance Monitoring Agency Type) should seem to have the same permissible values.

A: They should, and indeed they do have the same Permissible Values.

45. #50 (Compliance Milestones Status) at A(20) this might not be long enough.

A: We have increased it to 100 characters.

46. #54 Affiliation of Defendant is A(11) which could be similar to the Affiliation in Fac ID at A(40) since permissible values might be similar.

A: The Permissible Values for Affiliation of Defendant are listed, and none exceed the 11 characters provided.

Texas Natural Resource Conservation Commission

47. [A] concern for the TNRCC is the detail included in the Enforcement/Compliance data standards (i.e., categorizing and sub-categorizing inspection types and tracking milestones in enforcement actions) seem to go beyond the idea of a "core" set of data standards that should be common in all States/Regions.

A: See answer to Comment #6, above.

48. The Compliance Monitoring Multi-Media Indicator only provides information about whether the information is single or multi-media. There do not appear to be any fields which distinguish which program the information is related to, i.e., air, hazardous waste,

wastewater, etc. Recommendation: Instead of using "single" provide a list of acceptable program types, with multi-media being one.

A: See answer to Comment #1, above.

49. The following fields should be at the violation level, not the enforcement action general information level: Federal Statute Violated, State Statute Violated, Tribal Statute Violated, Local Statute Violated, Citation, and Noncompliance or Corrective Action Description. The reason that these should be at the violation level is that each violation included in an enforcement action could have different citations associated to them and the field lengths are not large enough to include all of them. It is not advisable to just lengthen the field lengths and concatenate the information because it would then be difficult to query for specific citations, which is a desirable activity.

A: See answer to Comment #3, above.

50. The field "Noncompliance or Corrective Action Description" should either be broken down into two fields or a decision needs to be made about which information is more important. It is not advisable to have one data standard with two different definitions.

A: See answer to Comment #4, above.

51. The compliance milestones status and status determination dates seem to be more of a report than an actual database field requirement. It would make more sense to have fields related to the due dates and the actual compliance dates and then prepare a report which would analyze the data. Most States do not have computerized systems to track perceived milestones and may not have the resources to set up such a system. If a decision is made to maintain these fields, we would urge EPA to make these fields optional rather than mandatory.

A: See answer to Comment #5, above.

University of Maryland School of Public Affairs, Shelley H. Metzenbaum, Ph.D., Visiting Professor

52. Compliance Monitoring Action Type (5) - Announced vs. Unannounced Inspections. The current definition does not allow a distinction between announced and unannounced compliance inspections. Making this distinction clear will enable agencies to assess the accuracy and value of the different types of inspections, by allowing comparison to unannounced inspections. (It may show, for example, that announced inspections detect 95% of the problems found in unannounced inspections. If that were the case, state agencies could announce most inspections, reducing the aggravation level of the regulated parties with little programmatic impact. If, on the other hand, a comparison shows that announced inspections pick up only 50% of the problems seen in unannounced inspections, it would let a state know it needed to increase the numbers of unannounced inspections. In addition, this sort of analysis from other states would help those states debating use of unannounced inspections assess its value more accurately.) Making this

distinction will also address public demand for unannounced inspections. To fix this problem, you could:

- Break the definition of "compliance inspection" into two definitions, "announced compliance inspection" and "unannounced compliance inspection," or

- Add a new data element name, "Advance Notification Type" and create two possible data element definitions, "announced" and "unannounced."

A: The commenter is right about the potential value of this information. However, most regulatory agencies (including EPA) do not currently include this information in its existing database or tracking system. It is, of course, also possible for agencies to manually perform an assessment of the difference in violation detection rates between announced and unannounced inspections, even without this being identified as a separate Data Element in the Data Standard. In an effort to prevent the Data Standard from become too overwhelming, the Workgroup has decided not to include the Data Element suggested by the commenter.

53. Compliance Inspection Type (6) - Random vs. physical sampling. Many states are now experimenting with the use of random samples (a mathematical term) to generate statistically valid compliance rates for different programs or sectors. Thus, the use of the phrase "does not involve sampling" to define "Compliance Evaluation Inspection" is likely to cause confusion as to whether it pertains to "physical samples" or the mathematical term, "random sampling." If you add "physical" before "sampling" for the data element definition "compliance inspection type" and wherever else it is used to refer to physical sampling, it will prevent confusion and misunderstanding.

A: The wording currently used in Data Element #6 is "collection of physical samples of air, water, waste, etc." We believe this adequately specifies what is meant.

54. Compliance Monitoring Action Reason (10). The data element definitions in this section are a great start, but need refinement to prevent confusion now and in the future.

54a Core program. This term is likely to be confusing, given that it means so many things to so many people in practice, and so many things even in the definition you propose here. Breaking this category into three would reduce the confusion significantly: (a) All Sources Monitored (or Universal Monitoring); (b) Statute-specified monitoring schedule; (c) Statistical Sampling. It would also enhance the value of the information for future interpretation and learning by states and the public.

Note that these three categories may apply to core programs as well as "priority" or "selected" programs. It may be preferable to add a Data Element Name called "Compliance Monitoring Scheduling Frequency" that includes the three categories noted in the paragraph above, along with a fourth category, "as needed" or "ad hoc."

A: The Workgroup indeed grappled at some length with the definition of "core". We recognize that it is still, at best, a compromise; but we believe it is an adequate one. That is, we believe that most regulatory agencies – particularly those that work with EPA on federal environmental programs – are in fact familiar with the term and the concepts underlying it. Once again, we opted for somewhat more simplicity at the expense of slightly greater ambiguity.

54b Selected Monitoring Action. This term is also likely to be confusing, because it encompasses so many possibilities, and because the term does not align with normal English usage of "selected." Again, breaking the category into its sub-categories would eliminate confusion: (a) referral; (b) complaint, (c) follow-up on previous finding of non-compliance, or (d) other probable cause.

A: As in the previous answer, we struggled to find appropriate nomenclature that would not require even further sub-categorization. Though the use of the word "selected" here may not be entirely intuitive, we believe the definition that immediately follows is reasonably clear.

54c Link to facility-numbering system. Some of the problems in this area would be alleviated if a state's data system allows users to generate an inspection rate for each program/category. To do that, however, it will be necessary to be able to count how many facilities in each program/category have been inspected as a percentage of the total number of regulated facilities in that program/category. It is not at all clear that this will be possible with these proposed data standards, because it would require the state to report sufficient facility information, by program, to generate the inspection rate. As discussed in the section "Policies Regarding Use," states should be strongly encouraged to use a facility-numbering system when using these data standards.

A: When compliance monitoring activity, violation data, etc., is properly linked to facility information, such kinds of analyses should indeed be possible.

55. Penalties (36 and 37) - Suspended penalties don't fit well in either of the Data Element Names "Cash Civil Penalty Amount Sought" (36) or "Cash Civil Penalty Amount Required" (37). A separate definition for a contingent penalty would capture this type of penalty.

A: Suspended or contingent penalties, which must only be paid in the event of future non-compliance by the respondent/defendant, are in the nature of "Stipulated Penalties," and we have clarified that this is how they should be captured under the Data Standard.

Association of State Drinking Water Administrators (ASDWA)

56. In the drinking water program, "compliance monitoring" refers to water samples collected to ascertain compliance with drinking water standards. These samples can be taken by the water system, state personnel, or a third party, depending on the individual state. The Enforcement/ Compliance Data Standard uses the term "compliance

monitoring" in a different context. If OEI intends to include compliance monitoring conducted in the drinking water program in this data standard, the data standard would need to be further expanded to better reflect drinking water "compliance monitoring."

A: It is *not* our intention that each "compliance monitoring" event by a public water supply system (PWS) – as that term is used in the drinking water program – should be included as a "compliance monitoring activity" as that term is used in this Data Standard. On the contrary, the Data Standard seeks information about compliance monitoring by regulatory agencies with respect to those they regulate. In the drinking water context, this means that the Data Standard seeks information about activities carried out by regulatory agencies to determine whether or not a PWS is complying with its regulatory obligations. One of those obligations is to regularly monitor the quality of the water they provide to their customers. (This is analogous to the routine monitoring required under the Clean Water Act of all NPDES or SPDES permittees, the results of which are reported through Discharge Monitoring Reports.) Once again, it is *not* our intention that each such monitoring event by a PWS, no more than each monitoring event by a NPDES permittee, is to be reported under this Data Element in the Data Standard. It is worth observing that the different way in which the term "compliance monitoring" is used by the drinking water program displays one of the primary reasons for establishing the Data Standard: across the nation, similar activities are sometimes called by different times and different activities are sometimes called by the same names. What is important, therefore, is not so much the *name* adopted for a particular Data Element or Permissible Value, but (a) whether the definition for that item is clear and unique, and (b) whether there are sufficient different elements or values to capture meaningful or significant differences among the kinds of activities performed by different regulatory agencies and in different programs. Applying the definitions in Data Element #6, the kind of activity described by the commenter as "compliance monitoring" in the drinking water program – if carried out by the PWS itself – would not represent a Compliance Monitoring Activity at all (*unless* the resulting data is submitted to and then reviewed by the regulatory agency, in which case such review would be characterized as an "Off-site Record Review" under Data Element #5, analogous to review of self-submitted DMRs by NPDES permittees). In any event, we agree that it will be important to work with the drinking water programs to assist them in understanding the terms used in this Data Standard, how they relate to comparable terms used in the program, and how "mapping" of data can be performed to satisfactorily implement this Data Standard.

57. Data Element 14, Violation Determined Date: EPA and states are currently working together to determine how to accurately portray violation determination dates for violations under the SDWA. The data standard needs to be flexible enough to incorporate the final determination.

A: Whatever agreement is reached, it will presumably allow for the entry of a date on which the determination is made that a violation exists. (Note that this is not

necessarily, or even probably, the same as the date on which the violation occurred or started, or even the date on which the agency first received information or documentation which eventually lead to the determination of a violation.) See also answer to Comment #37.

58. Data Element 15, Violation Class Type: Reporting a group of violations as "Significant or High Priority" based on a single violation will be misleading and may lead to misinterpretation of the actually number of "Significant or High Priority" violations. ASDWA suggests that OEI reconsider grouping of different severity violations. In addition, as written, these class types have no equivalent in the drinking water program.

A: These are terms that have long been in use in connection with the major delegated or authorized environmental programs, including those relating to the federal Clean Air Act, Clean Water Act and RCRA. These or similar terms are also used in some other federal programs. If they are inapplicable to a given program, such as drinking water, then this Data Element would simply not be used for a violation detected under such program.

59. Data Element 15, Violation Class Type: OEI should consider the need to add "Low Priority" for minor violations as a permissible value.

A: We purposefully did not use the term "low priority," because in many instances violations that are not "high priority" or "significant" as those terms are used in many environmental programs, are nevertheless important enough to warrant an enforcement response. The term "low priority" might suggest that regulatory agencies are not concerned with these violations, or that regulatees need not concern themselves too much with coming into compliance for such violations.

60. Enforcement Action General Information: EPA and state drinking water programs are working together to ensure that all drinking water enforcement actions can be linked to a violation. OEI should ensure that this data standard does not undermine this collaborative effort to prevent "orphan" enforcement actions.

A: All enforcement actions in a regulatory program, such as the drinking water program, should indeed be linked to one or more violations, and that is what the Data Standard provides. However, not all environmental enforcement actions can be linked to violations. For example, a Superfund cleanup order does not require an allegation that a responsible party "violated" any law – merely that the party is among those liable for the cleanup work. The same is true of many enforcement actions whose purpose is to secure corrective or remedial action rather than to enjoin or penalize a violator.

61. Data Element 31: Enforcement Action Type: Although the data standard includes numerous permissible value options, OEI must recognize that different state drinking water programs have different names and meanings for the different enforcement action types. What is considered a "Notice of Violation" in one state may be a "Letter to

Regulated Entity" in another. ASDWA recognizes that the purpose of this data standard is to establish a common vocabulary, but OEI must understand that not all state drinking water programs may be able to covert to this common vocabulary and the possible consequences of having different definitions.

A: See answer to Comment #56, above.

62. Data Element 33: Enforcement Action Status: Not all state drinking water programs manage the status of their enforcement actions to this level of detail. States are concerned that someone may misinterpret this lack of coding to mean that all enforcement actions are still open. OEI must consider this concern when determining how the data is presented.

A: Presumably the applicable data systems can distinguish between "open" and "closed" cases, which are the two most important Values in this Data Element. At any rate, we believe this is an important piece of information to provide, and we would not wish to exclude it from the list of data elements.

63. Data Element 35: Enforcement Action Resolution Type: OEI should add a permissible value that would allow for reporting of less formal resolutions.

A: As explained in the general information section for "Additional Enforcement Action Attributes," the Data Elements in this section (including #35) are applicable only to several specified Enforcement Action Types–in particular, those that are more formal in nature and should, inevitably, lead to one or another of the enumerated Resolution Types.

New Jersey Department of Environmental Protection

64. At least from the perspective of getting feedback from pesticide programs nationwide, I think most will be left out of this process. Only a handful are within state DEP's- most are within Depts of Ag, and have nothing to do with ECOS.

A: In the federal government as well as some states (*e.g.*, New York) the pesticides program is within the environmental agency. Nevertheless, agriculture agencies do manage the pesticides programs in other states, and they may certainly wish to review these Data Standards. We would be pleased to consider any further comments that might be forthcoming.

65. The New Jersey Environmental Management System (NJEMS) stores dates as MMDDYYYY. This system has been adopted by several other states and is known as Tempo. Please consider changing all date formats to match NJEMS/Tempo as several states use this date format.

A: The international data standard for date format is as we have set it out in the Enforcement & Compliance Data Standard: YYYYMMDD.

66. Compliance Monitoring Action Type

66a Information Request - is not a stand alone action that monitors compliance. It is an agency task that always generates a "compliance monitoring action" such as an inspection or record review. By including this as a separate Compliance Monitoring Action, you will count the information request and resulting review of information received as two compliance monitoring actions, when in reality, simply requesting information of a company does not provide any information on compliance status.

A: The Workgroup felt that there was a sufficient distinction in the nature of the activity to warrant inclusion of "Information Request" as a separate permissible value.

66b Compliance Investigation - Needs a more detailed definition for clear distinction between Compliance Inspection and Compliance Investigation, otherwise this will be left to interpretation and the data reported may be erroneous. New Jersey records Compliance Investigation when conducting a site visit to determine compliance resulting from an incident/complaint received by the Department. The distinction between inspection and investigation in New Jersey is the later is only recorded if it is the result of an incident.

A: See answer to Question #7b. As we understand it from the comment, a New Jersey "compliance investigation" would be mapped as a "Compliance Inspection" in Data Element #5. Notwithstanding the name New Jersey uses, this activity does not appear to involve the extended duration and complexity that the definition provides for "Compliance Investigation" as that term is used in the Data Element.

67. Compliance Inspection Type - NJ can derive this information from NJEMS but does not currently store Compliance Inspection Types equivalent to these. Consider eliminating the Inspection Type of Compliance Sampling Inspection and adding a separate field with Yes and No as permissible values to record whether or not sampling was performed. Sampling isn't a type of inspection, but a task conducted and data gathered during an inspection. Also please clarify that Case Development Inspection is meant to include follow up inspections which are conducted to determine a regulated entity's return to compliance with a previous enforcement action.

A: We recognize that not all reporting agencies will maintain information in their database about whether or not a compliance inspection included sampling. This is not a required field; but when the data is available it can be worthwhile to share it.

68. Compliance Monitoring Action Priority Originator and Compliance Monitoring Priority - I couldn't understand the difference between these data elements. It seems duplicative- both seem to ask for where the priority originated. Please make a distinction between the two in the definitions.

A: See answer to Comment #30.

69. Violation Determined Date - is the date when the agency determined that a facility was in noncompliance - the actual violation date may be prior to the violation determined date.

Perhaps a separate field for Violation date could be created. In a related concern, this document doesn't address how to report violations (sometimes more than 1,000 per quarter) detected by continuous monitoring systems.

A: See answer to Question #37. With respect to CEM data, we recommend that the Violation Determined Date be the date on which the regulatory agency reviewed the data submitted and made the determination that one or more violations have been adequately documented.

70. Since our initial "penalty documents" (NOP's) really aren't penalties, but "Offers of Settlement" in lieu of going to court, the closest thing in the permissible values listed is the description of "Field Citation." If this value is simply called a "citation" and not limited to only those issued in the field, it would cover our NOP's, which are issued from the office, but you would loose the distinction in the data. An additional permissible value needs to be added.

A: To the extent that such an "Offer of Settlement" constitutes initiation of an enforcement action, it appears to be best correlated with the permissible value "Written Notice of Violation" in Data Element # 31. That value is defined as follows: "A written notice sent to a regulated entity, initiating the enforcement process by informing the entity of violation(s) of applicable law, and requesting that the regulated entity take action to come into compliance, *with the expectation of further follow-up action by the regulatory agency*." [Emphasis added.] The expected follow-up action would be either the proposed settlement, or the issuance of a complaint or order if settlement is not achieved.

71. Where would Administrative Consent Orders and Settlement Agreements fit into this scheme? These are enforcement actions which are jointly negotiated and executed by the violator and the Department.

A: These would presumably be coded as "Final Orders" if, as we assume, they serve to resolve or conclude an enforcement action, and to obligate the respondent to take specified actions (e.g., pay a penalty, come into compliance).

72. Enforcement Action Resolution Type - Please consider an additional permissible value called "settled". For example, if you go back to data element #31, and have used the term "Field Citation" to describe what you have done, what do you use to describe the resolution in #35 (assuming the entity pays what the regulating agency is asking for)? Would this be considered Dismissed under the permissible values since it has been settled and is going no further, or do we need another term like "settled"?

A: Note that this Data Element #35 is applicable only to a limited subset of Enforcement Action Types. That subset, enumerated in the general information for Additional Enforcement Action Attributes, does not include Field Citations.

73. Cash Civil Penalty Amount Sought/Cash Civil Penalty Amount Required - These two fields need further definition to better clarify what data is expected. They appear to be the same.

A: The distinction is that the penalty sought refers to the amount initially requested, demanded or proposed in a complaint; and the amount required is the amount ultimately agreed upon or ordered by the tribunal or other responsible authority. Typically, the amount sought is higher than the amount required. We have added a Note to reemphasize this distinction.

74. There ought to be a definition of "Civil Penalty Amount Sought" and an explanation of how this element relates to the "Civil Penalty Amount Required."

A: See answer to Comment #73.

75. Why isn't there a "Penalty Collected" element?

A: The Workgroup considered this, and concluded that it raises levels of complexity which exceeded the benefit. For example, in EPA the information about actual collections is maintained in the agency's financial management data system, entirely separate from the enforcement database.

76. SEPs Description - This data is stored in word documents not as data, this may be a problem to provide. If we are able to provide the format should be expanded to 2000 characters.

A: We have expanded the field to 2000 characters.